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No. 80-1345

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

KAISER STEEL CORPORATION,
Petitioner,

v.

JULIUS MULLINS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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JOINT APPENDIX

(List of counsel on inside cover)

PETITION FOR CERTIORARI FILED FEBRUARY 10, 1981
CERTIORARI GRANTED MAY 4, 1981

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I.

RELEVANT DOCKET ENTRIES

in the

United States Court of Appeals (D.C. Cir.)

in

Julius Mullins et al.* v. *Kaiser Steel Corp.

No. 79-1463

RELEVANT DOCKET ENTRIES (D.C. CIR.)

DATE	FILINGS—PROCEEDINGS
1979	
March 27	Appellant Kaiser Steel Corporation's Notice of Appeal
May 7	Certification of original record
June 18	Appellant's brief
June 18	Joint Appendix
Aug. 24	Brief of Appellees Julius Mullins *et al.*
Sept. 19	Appellant's reply brief
Dec. 18	Oral argument before Circuit Judges Wilkey and Mikva and District Judge Flannery
1980	
Sept. 17	Opinion for the Court filed by Circuit Judge Mikva
Sept. 17	Dissenting opinion filed by Circuit Judge Wilkey
Sept. 17	Judgment affirming district court's summary judgment
Oct. 1	Appellant's petition for rehearing and suggestion for rehearing en banc
Nov. 12	Order denying appellant's petition for rehearing (Circuit Judge Mikva and District Judge Flannery; Circuit Judge Wilkey voting to grant petition)
Nov. 12	Order denying appellant's suggestion for rehearing en banc (Chief Judge Wright and Circuit Judges McGowan, Robinson, Wald, Mikva, Edwards and Ginsburg; Circuit Judges Tamm, MacKinnon, Robb and Wilkey voting to grant suggestion)

DATE	FILINGS—PROCEEDINGS
1980	
Nov. 17	Appellant's motion to stay issuance of mandate
Dec. 5	Order staying issuance of mandate pending application for petition for certiorari
1981	
Feb. 12	Certified copy of notice from Clerk, Supreme Court, advising that the petition for certiorari was filed on February 10, 1981 in SC No. 80-1345

II.

RELEVANT DOCKET ENTRIES

in the

United States District Court (D.D.C.)

in

Julius Mullins et al. v. *Kaiser Steel Corp.*

C.A. No. 78-0650

RELEVANT DOCKET ENTRIES (D.D.C.)

DATE		FILINGS—PROCEEDINGS
1978		
April	11	Complaint of plaintiffs Julius Mullins *et al.*; Exhibit A
June	2	Defendant Kaiser Steel Corporation's motion to transfer to a more convenient forum; memorandum in support of motion; affidavit of S.W. Zanolli
June	2	Defendant's Answer
June	27	Plaintiffs' opposition to defendant's motion to transfer to a more convenient forum; Exhibits A, B, C; affidavit of Martin B. Danzinger; Exhibit A; attachment
July	5	Defendant's reply in support of motion to transfer to a more convenient forum
Aug.	7	Order denying defendant's motion to transfer to a more convenient forum (Green, J.)
Sept.	13	Plaintiffs' motion for summary judgment; memorandum in support of motion; statement of material facts; six exhibits; affidavit of Martin B. Danzinger
Oct.	30	Defendant's motion for summary judgment; memorandum in support of motion and in opposition to plaintiffs' summary judgment motion; statement of material facts; affidavit of Robert Delaney; eight attachments; affidavit of Roger M. Haynes; affidavit of Charles M. Heath; affidavit of R. Heath Larry, Attachment A; affidavit of S.W. Zanolli, Attachments 1-6

DATE		FILINGS—PROCEEDINGS
1978		
Dec.	1	Plaintiffs' reply memorandum in support of motion for summary judgment; memorandum in opposition to defendant's motion for summary judgment; affidavits of Thomas N. Bethell, with Exhibits 1-8; Robert T. Boylan; Jerry N. Clark; Harry Huge, with Exhibit A; Donald E. Pierce, Jr.; and James D. Maddy in support of reply memorandum and memorandum in opposition to defendant's summary judgment motion; statement of genuine issues regarding the lawfulness of the purchase-of-coal clause under 29 U.S.C. § 158(e).
Dec.	20	Defendant's reply in support of motion for summary judgment
1979		
Mar.	6	ORDER filed by District Judge June Green, Feb. 28, 1979, granting plaintiffs' motion for summary judgment; denying defendant's motion for summary judgment; directing defendant to file remittance advice reports; directing defendant to pay the United Mine Workers of America Health and Retirement Funds the full amount due under the purchase-of-coal clause including interest on the amounts from the date they became due and owing; and directing defendant to pay plaintiffs their costs plus reasonable attorneys' fees
Mar.	9	Memorandum opinion filed by District Judge June Green
Mar.	27	Notice of Appeal by defendant from Order of Feb. 28, 1979

III.

RELEVANT PLEADINGS AND OTHER ITEMS FROM THE DISTRICT COURT RECORD

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1. Plaintiffs' Complaint, April 11, 1978, with Excerpts from Exhibit A (National Bituminous Coal Wage Agreement of 1974)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-0650

JULIUS MULLINS, KENNETH L. HOUCK, and PAUL R. DEAN, as Trustees of the UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, 2021 K Street, N.W. Washington, D.C. 20006 (202) 452-5000,
Plaintiffs,

v.

KAISER STEEL CORPORATION,
Defendant.

COMPLAINT FOR MONEY OWED AND OTHER RELIEF

1. This suit arises under and jurisdiction is founded upon Section 301 of the Labor Management Relations Act, 1947, 29 U.S.C. § 185, and Section 502 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132.

2. Plaintiffs Julius Mullins, Kenneth L. Houck, and Paul R. Dean are Trustees of the United Mine Workers of America 1950 Pension Trust, United Mine Workers of America 1950 Benefit Plan and Trust, United Mine Workers of America 1974 Pension Trust, and United Mine Workers of America 1974 Benefit Plan and Trust (hereinafter referred to collectively as "the Funds").

3. Plaintiffs conduct the business of the Funds at 2021 K Street, N.W., Washington, D.C. 20006. Venue lies in this Court under Section 502(e)(2) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(e)(2).

4. The Funds are employee welfare benefit plans and employee pension benefit plans within the meaning of Sections 3(1), (2), and (3), 4(a), and 502(a)(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1002(1), (2), and (3), 1003(a), and 1132(a)(3). Plaintiffs are fiduciaries within the meaning of Sections 3(21) and 502(a)(3) of said Act, 29 U.S.C. §§ 1002(21), 1132(a)(3).

5. Defendant Kaiser Steel Corporation is a corporation with a place of business at 300 Lakeside Drive, Oakland, California 96412. Since on or about December 6, 1974, defendant has been engaged in the production of coal and has employed persons represented by the International Union, United Mine Workers of America.

6. On or about December 6, 1974, defendant, certain other employers and associations, and the International Union, United Mine Workers of America entered into the National Bituminous Coal Wage Agreement of 1974 (hereinafter "1974 Agreement"), a copy of the provisions of which is attached hereto as Exhibit A and incorporated herein by reference. The 1974 Agreement is an agreement between an employer and a labor organization representing employees in an industry affecting commerce within the meaning of Section 301 of the Labor Management Relations Act, 1947, 29 U.S.C. § 185.

7. Article XX of the 1974 Agreement required that each employer party to the 1974 Agreement make contributions to the Funds based on the amount of coal produced by the employer, the hours worked by the employer's employees who perform classified work under the 1974 Agreement, and the amounts of coal procured or acquired by the employer for use or sale after production by another person when contributions to the Funds for that coal have not been made. Each employer party to the 1974 Agreement was required to submit to plaintiffs monthly statements showing, on a mine-by-mine basis, the full amounts due under Article XX

and the tons of coal produced, procured, or acquired for use or for sale and the hours worked with respect to which the amounts are payable (hereinafter "remittance advice reports").

8. Under Article XX of the 1974 Agreement, plaintiffs are authorized to audit the books and records of each employer party to the 1974 Agreement, to determine the amounts owed under Article XX of said Agreement, and to demand, collect, and receive such amounts.

9. Plaintiffs are informed and believe that defendant has produced, procured, and acquired coal but has failed and refused to make all contributions due to the Funds under Article XX of the 1974 Agreement. The amount of the required contributions which defendant has failed and refused to make is not known to said plaintiffs at this time.

10. Plaintiffs have demanded that defendants [sic] pay them the sums referred to in Paragraph 9 of this complaint, but the defendants have failed and continue to fail and to refuse to make such payment.

11. Defendant has failed to submit monthly remittance advice reports for coal procured or acquired on which contributions to the Funds have not been made, as it is required to do by Article XX of the 1974 Agreement.

12. Defendant's failure and refusal to make the payments described in paragraph 9 of this complaint to the Funds has caused and will cause the Funds to lose investment income and incur additional administrative expense.

WHEREFORE, plaintiffs Mullins, Houck, and Dean pray that this Court grant judgment for said plaintiffs as follows:

1. Requiring the defendant to file remittance advice reports covering coal procured or acquired for each month during the period covered by the 1974 Agreement;

2. Ordering the defendant to pay to the Funds the full amounts due under the 1974 Agreement, including interest on the amounts from the day they became due and owing;

3. Requiring the defendant in compliance with Article XX of the 1974 Agreement to present for inspection and/or copying all records pertaining to coal produced, procured, or acquired, and hours worked by defendant's employees, which are necessary to verify the amounts due and owing to the Funds;

4. Granting plaintiffs attorneys' fees, audit costs, and other costs and disbursements in this action; and

5. Granting plaintiffs such other and further relief as the Court may deem just.

Respectfully submitted,

/s/ Stephen J. Pollak
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Dated: April 11, 1978

APPENDIX A

[Excerpts]

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1974

Article I—ENABLING CLAUSE

[Omitted]

ARTICLE II—SCOPE AND COVERAGE

Section (a) Work Jurisdiction

[Omitted]

Section (b) Exemptions Clause

[Omitted]

Section (c) Supervisors Shall Not Perform Classified Work

[Omitted]

Section (d) Management of the Mines

[Omitted]

Section (e) Union's Rights

[Omitted]

Section (f) Application of this Contract to the Employer's Coal Lands

[Omitted]

Section (g) Contracting and Subcontracting

[Omitted]

Section (h) Leasing, Subleasing and Licensing Out of Coal Lands

[Omitted]

Section (i) Construction Work

[Omitted]

ARTICLE III—HEALTH AND SAFETY

Section (a) Right to a Safe Working Place

[Omitted]

Section (b) Federal Coal Mine Health and Safety Act of 1969

[Omitted]

Section (c) Joint Industry Health and Safety Committee

[Omitted]

Section (d) Mine Health and Safety Committee

[Omitted]

Section (e) Access to the Mine

[Omitted]

Section (f) Reports

[Omitted]

Section (g) Safety Rules and Regulations

[Omitted]

Section (h) Cooperation in Development of Mining Plans

[Omitted]

Section (i) Preservation of Individual Safety Rights

[Omitted]

Section (j) Physical Examination

[Omitted]

Section (k) Minimum Age

[Omitted]

Section (l) Workmen's Compensation and Occupational Disease

[Omitted]

Section (m) Safety Equipment and Protective Clothing Allowance

[Omitted]

Section (n) Maintenance

[Omitted]

Section (o) Special Safety Problem Areas

[Omitted]

Section (p) Settlement of Health or Safety Disputes

[Omitted]

ARTICLE IV—WAGES AND HOURS

Section (a) Basic Work Week

[Omitted]

Section (b) Basic Work Day

[Omitted]

Section (c) Lampman

[Omitted]

Section (d) Saturday, Sunday and Premium Work

[Omitted]

Section (e) Standard Daily Wage Rate

[Omitted]

Section (f) Joint Commission on Job Evaluation, Job Grades, and Correction of Job Grade Inequities

[Omitted]

ARTICLE V—HELPERS ON FACE EQUIPMENT IN UNDERGROUND MINES

Section (a) Assignment of Helpers

[Omitted]

Section (b) Duties and Responsibilities of Helpers

[Omitted]

Section (c) Exemption

[Omitted]

Section (d) Implementation

[Omitted]

ARTICLE VI—SHIFTS AND SHIFT DIFFERENTIALS

Section (a) Multiple Shifts

[Omitted]

Section (b) Hoisting of Coal

[Omitted]

Section (c) Shift Differentials

[Omitted]

Section (d) Working into the Next Shift

[Omitted]

Section (e) Call-back

[Omitted]

Section (f) Shift Rotation

[Omitted]

ARTICLE VII—MINE COMMUNICATION COMMITTEES

[Omitted]

ARTICLE VIII—STARTING TIME

Section (a) Shift Starting Time

[Omitted]

Section (b) Lowering Employees

[Omitted]

Section (c) Safety and Maintenance

[Omitted]

Section (d) Surface Facilities

[Omitted]

Section (e) Crew Changes

[Omitted]

ARTICLE IX—ALLOWANCES

Section (a) Bereavement Pay

[Omitted]

Section (b) Jury Duty

[Omitted]

Section (c) Reporting Pay

[Omitted]

Section (d) Military Duty

[Omitted]

Section (e) Personal or Sick Leave

[Omitted]

Section (f) Christmas Bonus for 1974

[Omitted]

Section (g) Cost-of-Living Catch-Up Allowance

[Omitted]

ARTICLE X—COST-OF-LIVING ADJUSTMENT

Section (a) Entitlement

[Omitted]

Section (b) Definitions

[Omitted]

Section (c) Method of Computation

[Omitted]

Section (d) Limitations

[Omitted]

Section (e) Adjustments Made November 1, 1976 and Prior

[Omitted]

Section (f) Cost-of-Living Roll-in

[Omitted]

Section (g) Unavailability of Consumer Price Index

[Omitted]

Section (h) No Downward Adjustment

[Omitted]

Section (i) Cost-of-Living Schedule

[Omitted]

Section (j) Adjustment Dates

[Omitted]

Section (k) Adjustments Made After 2nd Anniversary Date of this Agreement

[Omitted]

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Section (a) General Purpose

[Omitted]

Section (b) Eligibility

[Omitted]

Section (c) Commencement and Duration of Benefits

[Omitted]

Section (d) Amount and Payment of Benefits

[Omitted]

Section (e) Filing of Claims for Benefits

[Omitted]

Section (f) Structure and Administration

[Omitted]

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[Omitted]

Section (b) Sunday Holidays

[Omitted]

Section (c) Monday Holidays

[Omitted]

Section (d) Pay for Holidays Worked

[Omitted]

Section (e) Pay for Holidays Not Worked

[Omitted]

Section (f) Holidays During Vacation Pay

[Omitted]

Section (g) Birthday Holidays

[Omitted]

Section (h) Holidays for Sick and Injured

[Omitted]

Section (i) Time of Payment

[Omitted]

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[Omitted]

Section (b) Dates of Regular Vacation Period

[Omitted]

Section (c) Staggered Regular Vacation

[Omitted]

Section (d) Qualifying Period and Amount of Payment

[Omitted]

Section (e) Floating Vacation Days

[Omitted]

Section (f) Time of Payment

[Omitted]

Section (g) Obligation for Payment

[Omitted]

Section (h) Work During Vacation Shutdown
[Omitted]

ARTICLE XIV—GRADUATED VACATION

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[Omitted]

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[Omitted]

Section (c) Definition of Continuous Employment
[Omitted]

Section (d) Amount of Continuous Employment
[Omitted]

Section (e) Time of Payment
[Omitted]

Section (f) Rate of Payment
[Omitted]

Section (g) Scheduling and Pay in Lieu
[Omitted]

Section (h) Sick and Injured Employees
[Omitted]

ARTICLE XV—CHECKOFF
[Omitted]

ARTICLE XVI—TRAINING

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[Omitted]

Section (b) Orientation of New Employees
[Omitted]

Section (c) General Retraining Programs
[Omitted]

Section (d) Safety Training for Specific Job
[Omitted]

Section (e) Maintenance Training and Rate of Pay
[Omitted]

Section (f) New Inexperienced Employees at Underground Mines
[Omitted]

Section (g) General Training Provisions
[Omitted]

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[Omitted]

Section (b) Reduction in Work Forces
[Omitted]

Section (c) Layoff Procedure
[Omitted]

Section (d) Panels
[Omitted]

Section (e) Panel Custodians
[Omitted]

Section (f) Panel Members Accrue Seniority
[Omitted]

Section (g) Right to be Recalled
[Omitted]

Section (h) Recall of Persons on Layoff Status
[Omitted]

Section (i) Job Bidding

[Omitted]

Section (j) Training for Vacancy Not Filled by Bidding

[Omitted]

Section (k) Transfer to Other Mines of Employer

[Omitted]

Section (l) Leave of Absence

[Omitted]

Section (m) Permanent and Temporary Supervisors

[Omitted]

Section (n) Shift Preference

[Omitted]

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[Omitted]

Section (b) Checkweighmen

[Omitted]

Section (c) Preparation and Cleaning of Coal

[Omitted]

Section (d) Delivery of Cars

[Omitted]

Section (e) Explosives

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Section (g) Cutting Coal

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Section (h) Blacksmithing

[Omitted]

Section (i) Rockdusting

[Omitted]

Section (j) Day Men Transferred

[Omitted]

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Section (b) Classification Requirement

[Omitted]

Section (c) Temporary Assignments

[Omitted]

Section (d) Protection Against Discrimination

[Omitted]

Section (e) Compensation for Temporary Assignments

[Omitted]

ARTICLE XX—HEALTH AND RETIREMENT BENEFITS

[In Full]

Section (a) General Purpose

This Article makes provision for pension, health and other benefits for Employees covered by this Agreement,

and for former Employees who were covered under the United Mine Workers of America Welfare and Retirement Fund of 1950 ("1950 Fund"), and for the spouses and dependents of such Employees. The benefits to be provided are as set forth under separate plans and trusts described in Sections (b) and (c) of this Article.

A summary of the benefits to be provided appears immediately following this Article.

For purposes of this Article, the 1950 Pension Plan and Trust, the 1974 Pension Plan and Trust, the 1950 Benefit Plan and Trust and the 1974 Benefit Plan and Trust and each of them shall be a continuation of the UMWA Welfare and Retirement Fund of 1950 (hereinafter the 1950 Fund) provided that:

(1) The 1950 Pension Trust shall be solely responsible for all indebtedness, accounts payable, claims, causes of action and other liabilities (except as provided in (2) below) incurred or arising prior to December 6, 1974, and shall likewise be entitled and shall succeed to all assets held in trust by the 1950 Fund and all assets due the 1950 Fund on said date and to all rights heretofore accruing to or exercisable by the 1950 Fund;

(2) For all participants covered by the 1974 Pension Plan and Trust, the 1974 Pension Trust shall assume the liabilities for pensions including those arising out of past service credits attributable to employment prior to December 6, 1975.

Each participant and beneficiary shall be entitled only to the pension benefits provided in and paid from either the 1950 Pension Plan and Trust or the 1974 Pension Plan and Trust, and each participant, beneficiary and dependent shall be entitled only to the benefits provided in and paid from either the 1950 Benefit Trust or the 1974 Benefit Trust.

The general purpose of the plans established by this Article shall be to provide health care for working and retired miners and their dependents; pensions for miners upon their retirement; and health care and financial support for eligible disabled miners, miners' widows and surviving dependents as provided by each of the Trusts and Plans established under this Article.

It is agreed that the Trusts established in this Article are irrevocable Trusts created pursuant to, and within the scope of, Section 302(c) of the Labor-Management Relations Act, 1947, and they shall endure as long as the purposes for their creation shall exist.

Section (b) 1950 Plans and Trusts

Effective December 6, 1974, the name of the 1950 Fund is changed to the United Mine Workers of America 1950 Pension Trust ("1950 Pension Trust"). The 1950 Pension Trust is incorporated by reference and made a part of this Agreement. The terms of the 1950 Fund are hereby amended by substituting the terms of the 1950 Pension Trust and of the United Mine Workers of America 1950 Pension Plan ("1950 Pension Plan"). The 1950 Pension Plan is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1950 Pension Trust are as set forth in the 1950 Pension Plan.

Effective December 6, 1974, there is established a benefit plan and trust, which trust shall be known as the United Mine Workers of America 1950 Benefit Plan and Trust ("1950 Benefit Trust"). The 1950 Benefit Trust is incorporated by reference and made a part of this Agreement. The 1950 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1950 Benefit Trust.

Upon the discharge of all its obligations, any remaining assets in either the 1950 Benefit Trust or the 1950 Pension Trust shall, upon termination of such Trusts, be transferred to the 1974 Benefit or Pension Trusts, respectively.

Section (c) 1974 Plans and Trusts

(1) Effective December 6, 1974, there is established a pension trust to be known as the United Mine Workers of America 1974 Pension Trust ("1974 Pension Trust"), which is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1974 Pension Trust are as set forth in the United Mine Workers of America 1974 Pension Plan ("1974 Pension Plan"), which is incorporated by reference and made a part of this Agreement. This Plan is a continuation of the pension program of the 1950 Fund and is effective December 6, 1974.

(2) Effective December 6, 1974, there is established a benefit plan and trust, which trust shall be known as the United Mine Workers of America 1974 Benefit Plan and Trust ("1974 Benefit Trust"). The 1974 Benefit Trust is incorporated by reference and made a part of this Agreement. The 1974 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1974 Benefit Trust.

Section (d) Contributions by Employers

(1) During the life of this Agreement, for the periods of time indicated below, each signatory Employer engaged in the production of coal shall contribute to the Trusts established in this Article the amounts specified below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal produced by such Employer for use or for sale, and, in addition, each

signatory Employer (including those engaged in the production of coal and those not engaged in the production of coal) shall contribute to the Trusts established in this Article the amounts specified below based on cents per hour worked by each of the Employer's Employees who perform classified work under this Agreement:

(i) Into the 1950 Pension Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 56.0¢ per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, 52.4¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 55.4¢ per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 18.0¢ per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, 18.0¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 19.0¢ per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 19.2¢ per hour on each such hour worked; for the period beginning December 6, 1975, and ending December 6, 1976, 7.6¢ per ton on each such ton, plus 63.0¢ per hour on each such hour worked; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 7.6¢ per ton on each such ton, plus 66.0¢ per hour on each such hour worked; and

(iv) Into the 1974 Benefit Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 70.8¢ per hour on each such hour worked; for the period beginning December 6, 1975, and ending December 6, 1976, 77.0¢ per hour on each such hour worked; and for the period beginning December 6, 1976, and ending when

this Agreement is terminated, 88.0¢ per hour on each such hour worked;

(v) In the event that the 1950 Pension Trust, the 1950 Benefit Trust, the 1974 Pension Trust and the 1974 Benefit Trust are not established on the date that any contributions become payable under this Agreement, such contributions shall be paid to the 1950 Fund.

In addition to the contributions indicated above, during the life of the Agreement, each signatory Employer shall, for the periods of time indicated below, contribute to the Trusts established in this Article in the amounts shown below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal after production by another operator, procured or acquired by such Employer for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made (amounts shown below include cents per hour worked contributions converted to tonnage equivalents):

(i) Into the 1950 Pension Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 56.0¢ per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, 52.4¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 55.4¢ per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 18.0¢ per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, 18.0¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 19.0¢ per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period beginning December 6, 1974, and ending December 6, 1975,

9.4¢ per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, 38.0¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 38.9¢ per ton on each such ton; and

(iv) Into the 1974 Benefit Trust: for the period beginning December 6, 1974, and ending December 6, 1975, 34.8¢ per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, 37.2¢ per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, 41.7¢ per ton on each such ton.

(v) In the event that the 1950 Pension Trust, the 1950 Benefit Trust, the 1974 Pension Trust and the 1974 Benefit Trust are not established on the date that any contributions become payable under this Agreement, such contributions shall be paid to the 1950 Fund.

The parties hereto mutually agree that, if at any time during the term of this Agreement a court or tribunal of competent jurisdiction determines by a final decision that is not appealable that the provision appearing in the paragraph just preceding is invalid or in violation of the National Labor Relations Act, 1947, as amended, or other Federal or state law, the parties shall, at the option of and upon demand by the Union without affecting the integrity of any other provision of this Section or any other provision of the National Bituminous Coal Wage Agreement, meet and engage in good faith negotiations to agree upon a clause to be inserted into this Agreement in replacement of the provision found invalid or unlawful.

Definition of Hours Worked

Hours of work for purposes of Employer contributions to the various Health and Retirement Trusts shall include all hours worked, or fractions thereof, by Em-

ployees in a classified job covered by this Agreement. Hours actually worked for which a premium pay of any type is provided shall be treated for purposes of Employer contributions to the Trusts as though worked on a straight-time basis. Reporting pay for hours not actually worked shall not be included for the purpose of making Employer contributions to the Trust.

At any time during the term of this Wage Agreement, the Employers and the Union may agree upon a reallocation of contributions to be paid under the respective subdivisions (i) and (ii) in this Section, which will increase the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will decrease the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, or which will decrease the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will increase the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, provided that notice shall be given to the contributing Employers of the cents per ton to be allocated to each such Trust at least 30 days prior to the date the contributions become due and owing to the respective Trusts, subject to the following terms and conditions:

(a) No monies previously paid into or due and owing to either Trust nor any assets of either Trust shall be transferred to the other Trust:

(b) No decrease in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which can reasonably be expected to cause the 1950 Pension Trust and Pension Plan to fail to meet the minimum funding standards set forth in Section 302 of Title I, Subtitle B, Part 3, of ERISA or Section 1013 of Title II, Subtitle A, Part I of ERISA, or to fail to satisfy any applicable provisions of the Internal Revenue Code of 1954, including Sections 401 and 501 of said Code:

(c) No increase in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which will increase the contributions of the Employers to such Trust to an amount in excess of those amounts which, for Federal income tax purposes, are fully deductible by said Employers when paid into such Trust, pursuant to the provisions of the Internal Revenue Code of 1954;

(d) No reallocation of the contributions to be paid to the two Trusts shall be made which will increase the total combined contributions required by this Article to be made by the Employers to those two Trusts; and

(e) No decrease in the cents per ton to be contributed to the 1950 Benefit Trust shall be adopted which will result in any substantial reduction of the benefits currently provided in the 1950 Benefit Trust, nor shall any change in the cents per ton to be contributed to the 1950 Benefit Trust be adopted which will cause the contributions of the Employers to such Trust not to be fully deductible as paid or accrued under the applicable provisions of the Internal Revenue Code of 1954.

(2) The Trustees are hereby directed to establish a royalty rate or rates for bituminous coal which is recovered from slurry ponds, sludge piles, and other coal refuse, which is sold during the life of this Agreement, and such royalty rate will be paid on each ton of such coal recovered for use or for sale. Royalty rates currently being paid for coal recovered from slurry ponds, sludge piles and other coal refuse shall remain in effect unless and until changed by the Trustees. All royalties payable by Employers pursuant to this paragraph shall be divided among the 1950 Benefit Trust, the 1974 Benefit Trust, the 1950 Pension Trust and the 1974 Pension Trust in proportion to the total contribution paid to each such Trust by all Employers for the month preceding the month in which such royalty is due and payable.

(3) The obligation under this Section of any Employer signatory hereto shall be to contribute the amounts specified in this Section.

(4) The obligation to make payments to the Trusts specified in this Article shall become effective on the dates specified in the respective Subdivisions (i) through (v) of this Section, and the first payments are to be made on the 10th day of each month after such specified dates, and thereafter continuously on the 10th day of each succeeding calendar month.

(5) It shall be the duty of each of the Employers signatory hereto to keep current said payments due to the Trusts, and to furnish to the International Union, United Mine Workers of America and to the Trustees of those Trusts a monthly statement showing on a mine-by-mine basis the full amounts due hereunder and the tons of coal produced, procured or acquired for use or for sale and the hours worked with respect to which the amounts are payable. Payments to those Trusts shall be made by check payable, as appropriate, to:

"Trustees of the United Mine Workers of America 1950 Pension Trust"

"Trustees of the United Mine Workers of America 1950 Benefit Trust"

"Trustees of the United Mine Workers of America 1974 Pension Trust"

"Trustees of the United Mine Workers of America 1974 Benefit Trust"

The Trustees are hereby authorized to require each signatory Employer to make payment of all contributions to the 1950 Benefit Trust, the 1974 Benefit Trust, the 1950 Pension Trust and the 1974 Pension Trust by a single check made payable in such manner as may be specified by the Trustees.

(6) Payments shall be delivered or mailed to the office of the Trusts currently located at 2021 K Street, N. W., Washington, D. C. 20006, or as otherwise designated by the Trustees of those Trusts.

(7) Failure of any Employer signatory hereto to make full and prompt payments to the Trusts specified in this Article in the manner and on the dates herein provided shall be deemed a violation of this Agreement. This obligation of each Employer signatory hereto, which is several and not joint, to so pay such sums shall be a direct and continuing obligation of said Employer during the life of this Agreement and it shall be deemed a violation of this Agreement, if any mine, preparation plant or other facility to which this Agreement is applicable shall be sold, leased, subleased, assigned, or otherwise disposed of for the purpose of avoiding any of the obligations hereunder.

(8) Each Employer agrees to give proper notice to the President of the local union at the mine by the 18th day of each month that the Employer has made the required payment to the Trusts for the previous month, as required by this Article, or is delinquent in such payment, such notice to set forth the amount paid to the Trusts, or the amount of the delinquency, the tonnage produced and the hours worked with respect to the mine or mines under the jurisdiction of such local union.

(9) Title to all the monies paid into and/or due and owing to the Trusts specified in this Article shall be vested in and remain exclusively in the Trustees of those Trusts. It is the intention of the parties hereto that those Trusts shall constitute irrevocable trusts and that no benefits or money payable from those Trusts shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and that any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void.

(10) It is understood that the individual Employees of Employers agree, through their representative, the United Mine Workers of America, to surrender any personal or individual right to or interest in monies paid or required to be paid to the Trusts pursuant to these agreements (which monies might otherwise have been paid for wages or other benefits to such Employees), in consideration of the benefit which is provided by the pooling of such monies into common funds to be applied to the benefit of the designated beneficiaries pursuant to the Trust instruments.

(11) Any judgment obtained by the Trustees of the Trusts established pursuant to this Agreement for a default giving rise to damages accruing to more than one of the Trusts established hereunder shall be allocated by the Trustees among such Trusts in proportion to the amounts owing to each which gave rise to such judgment.

Section (e) Responsibilities and Duties of Trustees

(1) Each Trust shall be administered by a Board of three Trustees, one of whom shall be appointed by the Employers; one of whom shall be appointed by the Union; and one of whom shall be a neutral party, selected by the other two. The Trustees, or their duly appointed successors, shall serve for the duration of the Agreement and as long thereafter as the proper continuation and administration of the Trusts shall require. The representative of the Employers on the Board of Trustees shall be C. W. Davis, Bluefield, West Virginia; the representative of the Union on said Board of Trustees shall be Harry Huge, Washington, D.C.; and Paul R. Dean, Washington, D.C., is appointed as the neutral Trustee. Said three Trustees so named and designated shall constitute the Board of Trustees to administer the Trusts.

(2) It is the intent and purpose of the contracting parties that full cooperation shall be given by each of them to

one another, to the Trustees provided for under this Article, and to all affected mine workers, to the eventual coordination and development of policies and working agreements necessary or advisable for the effective operation of the Trusts and Plans.

(3) Action which may be required by the Employers in connection with any matter hereunder, including but not limited to the appointment of a successor Trustee, may be taken by those Employers who are parties to this Agreement, and authorization, approval or ratification of Employers representing fifty-one per cent (51%) or more of the total contributions made to the Trusts during the calendar year (or such shorter period which may have elapsed after the effective date of this Agreement) previous to that in which the action is taken shall be sufficient and shall bind all Employers.

(4) All covenants, rights and obligations accruing to the Trusts, and Benefit Plans, and the Trustees of the Pension and Benefit Trusts and Plans, and all breaches, violations and/or defaults of any provision of this Article pertaining to the Trusts and Plans, the Trust Agreements, or Pension Plans, shall be enforced by the Trustees, at their discretion, through any and all available legal means, without first exhausting the grievance and arbitration procedures set forth in this Agreement, and such Trustees shall determine whether any provision of this Article pertaining to the Trusts and Plans, the Trust Agreements or Pension Plan has been breached, violated or is in default.

Section (f) Audits, Reports and Notices

(1) It is agreed by the contracting parties that annual independent audits of the Trusts shall be made by independent certified public accountants to be designated by the Trustees of the Trusts. A statement of the results of such audits shall be sent to the contracting parties and

shall be made available upon written request to any working or retired miner or to any beneficiary either by mail or at the principal office of the Trusts, or at such other place as may be designated by the Trustees.

(2) If the Trustees determine that there is reasonable cause to question the accuracy of the sums paid under Section (d) of this Article, or of any verification thereof made by an Employer for a given monthly or annual period, the Employer shall, upon written request by the Trustees, make available for inspection and/or copying at reasonable times and places to a representative of the Trustees, those records which are necessary to verify the accuracy of the sums paid.

(3) A complete accounting, on a mine-by-mine basis, of contributions received by the Trusts under this Article shall be furnished by the Trustees, at least on a quarterly basis, to the International Union. Such an accounting will also be supplied to the District and Local offices of the Union with respect to the mine or mines under their jurisdiction. Such accountings shall include tonnages of coal produced and hours worked with respect to which contributions were paid, together with an identification of any period or periods in which contributions were delinquent, showing the amounts of such delinquencies. The Trustees shall take such action as they deem appropriate to collect any such delinquencies, and shall advise the International Union and the appropriate Districts and Locals of the Union, on at least a monthly basis, of such delinquencies, as long as such delinquencies continue.

(4) Upon the written request of any International, District or Local officer of the Union, the Trustees shall make available within seven (7) days of receipt of such request an up-to-date accounting of contributions made and delinquencies outstanding, in respect to any mine or related facility with respect to which such officer has union jurisdiction.

Section (h) Administration of Trusts

(1) Each Employer shall make available to the Trustees within a reasonable time such information as the Trustees may determine to be reasonably required for the purpose of administering the Trusts and Plans.

(2) The Trustees shall respond to all written requests for information, applications, and other communications from beneficiaries within 15 working days from their receipt at the office of Trusts. A response from the Trustees may be either a telephonic communication or a letter acknowledging receipt of such communication from the beneficiary. A pension application must be initially approved or denied within 12 weeks of the receipt of the application. The foregoing shall not apply in the event of delays caused by conditions beyond the control of the Trustees.

(3) Within six months after the effective date of this Agreement, the Trustees shall develop a suitable plan for policing and monitoring the rolls of those entitled to benefits from the Trusts. On at least a quarterly basis, the Trustees shall have available a complete listing of current beneficiaries, identified by UMWA district and local union jurisdiction, if applicable. The Trustees shall promptly investigate and determine the eligibility or ineligibility of any beneficiary whose right to receive benefits from the Trusts has been challenged by an Officer of the International, District or Local Union or by any Employer. In the event that a beneficiary or beneficiaries shall be determined to be ineligible for health care or other benefits, the Trustees shall take prompt action to correct the situation.

(4) Within six months after the effective date of this Agreement, the Trustees shall conduct a comprehensive review of procedures for monitoring covered medical expenses and shall report to the contracting parties with respect to insuring an effective system of cost controls,

especially regarding any fees charged by physicians, hospitals, clinics, pharmacists or others which appear to be excessive. The Trustees shall take such steps as they deem appropriate to improve such procedures, and shall report to the contracting parties on such activities regularly thereafter, at least annually.

(5) The Trustees are authorized, upon approval by the Employers and the Union, to make such changes in the Plans and Trusts hereunder as they may deem to be necessary or appropriate.

They are also authorized and directed, after adequate notice and consultation with the Employers and Union, to make such changes in the Plans and Trusts hereunder, including any retroactive modifications or amendments, which shall be necessary:

(a) to conform the terms of each Plan and Trust to the requirements of ERISA, or any other applicable federal law, and the regulations issued thereunder;

(b) to obtain determination letters from the Internal Revenue Service that the two Pension Trusts will each meet the requirements of Section 401 of the Internal Revenue Code and the Trusts thereunder will be exempt under Section 501(a) of such Code and that the two Benefit Trusts will be exempt under Section 501(c)(9) of such Code;

(c) to establish the deductibility for income tax purposes of any and all contributions made by the signatory operators to the Pension Trusts and Benefit Trusts as paid or incurred; or

(d) to comply with all applicable court or government decisions or rulings.

SUMMARY OF PRINCIPAL PROVISIONS, UMWA HEALTH AND RETIREMENT BENEFITS

(1) PENSIONS FOR MINERS WHO ARE ALREADY RETIRED:

Formerly at $150 per month, these pensions are to be increased according to the following schedules:

(a) For retired miners who receive state or federal black lung benefits, an immediate increase to $200 per month, with a second increase one year after the effective date of this Agreement to $215 per month, and a third increase two years after the effective date of this Agreement to $225 per month.

(b) For retired miners who do not receive state or federal black lung benefits, an immediate increase to $200 per month, with a second increase one year after the effective date of this Agreement to $225 per month, and a third increase two years after the effective date of this Agreement to $250 per month.

Any pensioned miner covered in this Plan will retain his Health Services card until death, and upon his death his widow will retain a Health Services card until her death or remarriage.

(2) PENSIONS FOR MINERS WHO RETIRE AFTER THE EFFECTIVE DATE OF THIS AGREEMENT BUT PRIOR TO JANUARY 1, 1976:

A working miner who retires after the effective date of this Agreement but prior to January 1, 1976 and who is eligible for a pension will receive the same benefit levels as set forth in paragraph (1).

(3) PENSIONS FOR MINERS WHO RETIRE IN 1976:

A working miner who retires at any time in 1976 and who is eligible for a pension under the terms of this Agreement will receive pension benefits based upon an entirely

new plan which provides credit for all years worked. Full credit is provided for years worked in mines of signatory Employers; partial credit is provided for years worked in mines of non-signatory Employers.

The earliest retirement age under this Plan will be 55. A miner may retire at 55 with 10 or more years of signatory employment.

Pension credits under the new plan are increased as a miner accumulates more years of employment. Benefits are also based upon a miner's age at the time of retirement with maximum benefits payable to miners who retire at the age of 62 or more.

In the first year of this pension plan (1976), the maximum credits are as follows:

- $12 per month multiplied by the years of signatory employment for the first 10 years of employment.
- $12.50 per month multiplied by the years of signatory employment for the second 10 years of employment.
- $13 per month multiplied by the years of signatory employment for the third 10 years of employment.
- $13.50 per month multiplied by the years of signatory employment for each year over 30 years of employment.

To estimate your pension under the terms of this new Plan, see the table on page 51.

Upon the death of a miner receiving a pension under this new Plan, his widow will receive a pension equal to 50 per cent of his pension until her death and will retain a Health Services card until her death or remarriage.

As a hedge against the anticipated increase in the cost of living, miners who retire under the new Plan during 1976 will receive a $10 per month increase in 1977.

(4) PENSIONS FOR MINERS WHO RETIRE IN 1977:

Benefits under the new Plan will be increased for miners retiring in 1977. Subject to the same terms as paragraph (3), the maximum benefit schedule applicable in 1977 will be as follows:

- $12.50 per month multiplied by the years of signatory employment for the first 10 years of employment.
- $13 per month multiplied by the years of signatory employment for the second 10 years of employment.
- $13.50 per month multiplied by the years of signatory employment for the third 10 years of employment.
- $14 per month multiplied by the years of signatory employment for each year over 30 years of employment.

If you retire in 1977, estimate your pension by referring to the table on page 51.

Upon the death of a miner receiving a pension under this new Plan, his widow will receive a pension equal to 50 per cent of his pension until her death and will retain a Health Services card until her death or remarriage.

(5) PENSIONS FOR DISABLED MINERS:

A miner who becomes permanently and totally disabled as the result of a mine accident after the effective date of this Agreement will become eligible for pension benefits according to the following schedule:

(a) If a miner has less than ten years of signatory employment at the time of his disabling accident, he will receive a $125-per-month pension for life, and will retain his Health Services card for life.

(b) If a miner has ten years or more of signatory employment at the time of his disabling accident, he will receive an increased pension based upon the years of credited employment which he has accumulated at the time of his disabling accident. If the disabling accident occurs after the effective date of this Agreement but prior to January 1, 1976, the initial pension payment will be $125 per month, but such amount will, effective January 1, 1976, be increased to the pension levels at age 62 shown in the table on page 51. If the disabling accident occurs on or after January 1, 1976, the initial pension levels at age 62 shown on page 51 will apply immediately. (For example, a miner disabled during this period of time who is age 44 and has 22 years of employment, would be eligible effective January 1, 1976 for a disability pension of $271 per month.)

If the disabling accident occurs in 1977, the higher schedule of benefits shown in the table on page 51 will apply. (In this case, the example Employee would receive $282 per month.)

(c) A miner who was permanently and totally disabled as the result of a mine accident after May 29, 1946, but prior to the effective date of this Agreement in a then signatory mine, will be eligible, upon application and certification of disability, for a pension of $125 per month for the rest of his life, and will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(6) PENSIONS FOR WIDOWS:

The new Plan provides, for the first time, for widows' pensions. Benefits will ordinarily be payable according to the following schedule:

(a) If a miner working on or after January 1, 1976, becomes eligible for a pension at any time thereafter,

his widow will be entitled to receive a Surviving Spouse pension equal to 50 per cent of his pension until her death; she will retain a Health Services card until her death or remarriage.

(b) If, on or after January 1, 1976, a working miner dies (regardless of cause) and would have been eligible for an immediate pension had he retired on the date of his death, his widow will be eligible for a pension equal to 50 per cent of the pension he would have received, and will receive his pension until her death; she will retain a Health Services card until her death or remarriage.

(7) DEFERRED VESTED PENSION:

If a working miner terminates his employment for any reason after completing 10 years of signatory employment, and before age 55, he will be eligible to receive a pension at age 62, or an actuarially reduced pension at any time after 55. The widow's pension described in paragraph (6) does not apply to the widow of a miner receiving a deferred vested pension.

(8) BASIC DEATH BENEFITS:

Under the terms of this Agreement, basic death benefits are substantially increased, and will be payable according to the following schedule:

(a) Upon the death of a working miner with one to five dependents, a death benefit of $7,500 will be paid to his widow, or, in the absence of a widow, to his surviving dependents.

(b) Upon the death of a working miner with more than five dependents, a death benefit of $8,000 to $10,000 will be paid to his widow (or, in the absence of a widow, to his surviving dependents), based on an incremental payment of $500 per dependent.

(c) Upon the death of a working miner with no dependents, a death benefit of $2,000 will be paid to his

nearest designated survivor, except that if the cause of death was any accident, the death benefit will be $7,500.

(d) Upon the death of a pensioned miner with dependents, a death benefit of $2,500 will be paid to his widow, or, in the absence of a widow, to his surviving dependents.

(e) Upon the death of a pensioned miner with no dependents, a death benefit of $2,000 will be paid to his nearest designated survivor.

(9) DEATH BENEFITS WHEN DEATH IS THE RESULT OF A MINE ACCIDENT:

If, after the effective date of this Agreement, a miner is killed in a mine accident, his widow will receive, in addition to the basic death benefit described above, a one-time cash payment of $10,000 plus $100 per month until her death or remarriage. These benefits will be in addition to any pension to which she may be entitled. In the event that there is no surviving spouse and there is one or more surviving dependent children, the above benefits will be payable to unmarried dependent children until age 22.

(10) HEALTH SERVICES CARD:

Regulations already in effect governing eligibility for Health Services cards are amended to include the following:

(a) A miner who (1) has completed 20 years of credited service, including the required number of years of signatory service, (2) has not attained age 55, and (3) is disabled and receiving Social Security disability insurance benefits will be eligible for a Health Services card.

(b) A working miner who becomes totally disabled due to a compensable disability within 4 years of the

date he would be eligible for retirement shall be entitled to a Health Services card while so disabled and during the period for which Workmen's Compensation payments are applicable.

(c) The widow of a miner who retired and received a pension at any time on or after May 29, 1946, will receive, upon approval of application, a Health Services card until her death or remarriage.

(d) The widow of a miner who became permanently and totally disabled as the result of injuries suffered in a mine accident at any time on or after May 29, 1946, will, upon approval of application, receive a Health Services card until her death or remarriage.

(e) The widow of a miner who is currently receiving a pension, or of a miner who receives a pension (other than a deferred vested pension based on less than 20 years of credited service) at any time after the effective date of this Agreement will upon his death retain a Health Services card until her death or remarriage.

(f) Disabled or retarded children of Health Services cardholders will be covered for life, so long as a surviving parent holds the card.

(11) HEALTH CARE:

All current programs administerd by the UMWA Health and Retirement Funds will be carried forward and expanded as required to cover additional beneficiaries.

The foregoing summary is subject to the complete description of all benefits provided pursuant to this Agreement, which will be found in the Pension and Health Plans and Trusts adopted as part of this Agreement and incorporated herein by reference under the title "UMWA Health and Retirement Benefits." In case of conflict, the provisions of the Plans and Trusts shall be governing.

ARTICLE XXI—SURFACE MINES

Section (a) Parking Areas

[Omitted]

Section (b) Manning of Surface Mining Equipment

[Omitted]

Section (c) Eating Place

[Omitted]

Section (d) Cabs

[Omitted]

Section (e) Special Health and Safety Problems in Surface Mines

[Omitted]

Section (f) Toilets

[Omitted]

Section (g) Swing Shift

[Omitted]

Section (h) Leasing of Employees' Vehicles

[Omitted]

Section (i) Production and Processing of Coal at Surface Mines

[Omitted]

ARTICLE XXII—MISCELLANEOUS

Section (a) Bathhouse

[Omitted]

Section (b) Access Roads

[Omitted]

Section (c) Parking Facilities

[Omitted]

Section (d) Bulletin Boards

[Omitted]

Section (e) Coke and Cleaning Plants

[Omitted]

Section (f) Compulsory Retirement

[Omitted]

Section (g) House Coal

[Omitted]

Section (h) House Rent

[Omitted]

Section (i) Irregular Work

[Omitted]

Section (j) Memorial Periods

[Omitted]

Section (k) Closing Following Fatal Accidents

[Omitted]

Section (1) New Machinery

[Omitted]

Section (m) Pay Dues

[Omitted]

Section (n) Lunches

[Omitted]

Section (o) Portals

[Omitted]

Section (p) Tools

[Omitted]

Section (q) Tramming

[Omitted]

Section (r) Local Union Meeting Place

[Omitted]

ARTICLE XXIII—SETTLEMENT OF DISPUTES

Section (a) Mine Committee

[Omitted]

Section (b) Arbitration Review Board

[Omitted]

Section (c) Grievance Procedure

[Omitted]

Section (d) Fifteen Day Limitation

[Omitted]

Section (e) Earnest Effort to Resolve Disputes

[Omitted]

Section (f) Employer's Right to Presence of Member of Mine Committee

[Omitted]

Section (g) Right of Grievant to be Present

[Omitted]

Section (h) Finality of Decision or Settlement

[Omitted]

Section (i) Exclusion of Legal Counsel

[Omitted]

Section (j) Expenses of Chief Umpire and Panel Umpires

[Omitted]

Section (k) Circulation of Approved Decisions

[Omitted]

Section (l) Waiver of Time Limits

[Omitted]

ARTICLE XXIV—DISCHARGE PROCEDURE

Section (a) Just Cause Required

[Omitted]

Section (b) Procedure

[Omitted]

Section (c) Suspension

[Omitted]

Section (d) Immediate Arbitration

[Omitted]

Section (e) Regular Arbitration

[Omitted]

Section (f) Compensation for Lost Earnings

[Omitted]

ARTICLE XXV—DISCRIMINATION PROHIBITED

[Omitted]

ARTICLE XXVI—DISTRICT AGREEMENTS

Section (a) New Districts of the United Mine Workers May Be Established

[Omitted]

Section (b) Prior Practice and Custom

[Omitted]

Section (c) Protective Wage Clause

[Omitted]

Section (d) Approval of District Agreements

[Omitted]

ARTICLE XXVII—MAINTAIN INTEGRITY OF CONTRACT AND RESORT TO COURTS

[Omitted]

ARTICLE XXVIII—NATIONAL CONFERENCES

[Omitted]

ARTICLE XXIX—SEVERABILITY CLAUSE

Section (a) General Rule

[Omitted]

Section (b) Exception

[Omitted]

ARTICLE XXX—RATIFICATION AND TERMINATION OF THIS AGREEMENT

[Omitted]

APPENDIX A—PART I

[Omitted]

APPENDIX A—PART II

[Omitted]

APPENDIX A—PART III

[Omitted]

APPENDIX B—PART I

[Omitted]

APPENDIX B—PART II

[Omitted]

APPENDIX B—PART III

[Omitted]

III.

2. Defendant's Answer

June 2, 1978

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-0650

JULIUS MULLINS, *et al.*,
Plaintiffs,
v.
KAISER STEEL CORPORATION,
Defendant.

ANSWER OF DEFENDANT KAISER STEEL CORPORATION

Defendant Kaiser Steel Corporation ("Kaiser Steel") hereby answers the Complaint in Civil Action No. 78-0650 filed on or about April 11, 1978 (hereinafter "Complaint"), as follows:

First Defense

With respect to the numbered paragraphs of the Complaint, Kaiser Steel:

1. States that Paragraph 1 of the Complaint alleges conclusions of law which do not require answer but, if required, admits that plaintiffs purport to bring this suit under the statutes which they cite and denies that those statutes offer any basis for suit or that there is any other basis for suit.

2. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint and therefore denies those allegations.

3. Lacks knowledge or information sufficient to permit it to form a belief as to the truth of the allegations of the first sentence of Paragraph 3 of the Complaint and therefore denies those allegations. States that the second sentence of Paragraph 3 of the Complaint alleges con-

clusions of law which do not require answer but, if required, denies the allegations.

4. States that Paragraph 4 of the Complaint alleges conclusions of law which do not require answer but, if required, lacks knowledge or information sufficient to permit it to form a belief as to the truth of those allegations and therefore denies them.

5. Denies the allegations of the first sentence of Paragraph 5 of the Complaint, but states that Kaiser Steel Corporation is a corporation having its principal place of business at 300 Lakeside Drive, Oakland, California 94666. Admits the allegations of the second sentence of Paragraph 5 of the Complaint.

6. States that Paragraph 6 of the Complaint alleges conclusions of law which do not require answer.

7. States that Paragraph 7 of the Complaint alleges conclusions of law which do not require answer but, if required, admits that Section (d) of Article XX of the 1974 Agreement provides as set forth at pages 28-30 of Exhibit A to the Complaint and denies the remaining allegations of Paragraph 7 of the Complaint.

8. States that Paragraph 8 of the Complaint alleges conclusions of law which do not require answer but, if required, admits that Sections (f) (1) and (f) (2) of Article XX of the 1974 Agreement provide as set forth at page 30 of Exhibit A to the Complaint and denies the remaining allegations of Paragraph 8 of the Complaint.

9. Lacks knowledge or information sufficient to permit it to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint concerning plaintiffs' information, belief, and knowledge and therefore denies them; admits that it has produced, procured and acquired coal; but denies the remaining allegations of Paragraph 9 of the Complaint.

10. Admits that plaintiffs have demanded that defendant make additional contributions to the Funds, but denies the remaining allegations of Paragraph 10 of the Complaint.

11. Admits that it has not submitted monthly remittance advice reports for coal procured or acquired, but denies the remaining allegations of Paragraph 11 of the Complaint.

12. Lacks knowledge or information sufficient to permit it to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint and therefore denies them.

To the extent that any allegation of any of the paragraphs of the Complaint is not specifically admitted, it is denied.

Second Defense

The provisions of the 1974 Agreement on which plaintiffs rely are, and were at their inception, void and unenforceable because in violation of Section 8(e) of the Labor-Management Relations Act, 29 U.S.C. § 158(e) (1970).

Third Defense

The provisions of the 1974 Agreement on which plaintiffs rely are, and were at their inception, void and unenforceable because in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2 (1970).

Fourth Defense

The Complaint fails to state a claim upon which relief can be granted.

Fifth Defense

The remedies plaintiffs seek are not proper remedies in a court of equity because they, and the provisions of the 1974 Agreement on which they are based, are contrary to public policy.

Sixth Defense

Paragraph 2 of the prayer for relief requests a form of relief that is not a proper remedy of a court of equity, and that Paragraph should be stricken from the Complaint.

Seventh Defense

Plaintiffs lack standing to bring this action.

Eighth Defense

The Complaint and this action do not comply with the requirements of Rule 19 of the Federal Rules of Civil Procedure because of the failure to join, as parties in the action, persons who have an interest relating to the subject of the action and are so situated that disposition of the action in their absence may (a) as a practical matter impair or impede their ability to protect that interest and (b) leave Kaiser Steel subject to a substantial risk of inconsistent obligations.

Ninth Defense

Plaintiffs' claims are barred at least in part by the non-occurrence of events which are conditions precedent to any duty of performance by Kaiser Steel.

Tenth Defense

Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations.

Eleventh Defense

The Complaint and any claim for equitable relief purportedly stated therein are barred in whole or in part by unclean hands, by estoppel, and by laches.

Respectfully submitted,

ROBERT A. HAMMOND, III
A. DOUGLAS MELAMED
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June 2, 1978

III.

3. Plaintiffs' Motion for Summary Judgment

September 13, 1978

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-0650

JULIUS MULLINS, *et al.*,
Plaintiffs,

v.

KAISER STEEL CORPORATION
Defendant.

MOTION OF PLAINTIFF TRUSTEES FOR SUMMARY JUDGMENT

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure and Rule 1-9(h) of the Rules of this Court, plaintiffs Julius Mullins, Kenneth L. Houck, and Paul R. Dean, Trustees of the United Mine Workers of America Health and Retirement Funds (hereinafter the "Trustees"), hereby move this Court for summary judgment that Kaiser Steel Corporation (hereinafter "Kaiser") is obligated to pay to the United Mine Workers of America Health and Retirement Funds (hereinafter the "Funds") the contributions due under the "purchase-of-coal" clause of Article XX(d) of the National Bituminous Coal Wage Agreement of 1974 (hereinafter the "1974 Agreement") and:

(1) Ordering Kaiser to file remittance advice reports covering coal procured or acquired for each month during the period covered by the 1974 Agreement;

(2) Ordering Kaiser to pay to the Funds the full amounts due in contributions pursuant to the "purchase-of-coal" clause of Article XX(d) of the 1974 Agreement, including interest on the amounts from the date they became due and owing, such amounts to be determined after further proceedings;

(3) Ordering Kaiser to present for inspection and/or copying all records pertaining to coal produced, pro-

cured or acquired and hours worked by defendant's employees, which are necessary to verify the amounts due and owing to the Funds pursuant to the 1974 Agreement, and to pay the costs of any audits conducted by plaintiff Trustees in connection with the verification of these amounts;

(4) Granting plaintiff Trustees attorneys' fees in the action pursuant to Section 502(g) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132; and

(5) Granting plaintiff Trustees costs in this action.

This motion is based on the material facts in the record, as supplemented by the affidavit filed this day by the plaintiff Trustees. These facts are set forth in the accompanying Statement of Material Facts as to Which There Is No Genuine Issue. The legal authorities supporting this motion are set out in the accompanying Memorandum of Plaintiff Trustees in Support of Motion for Summary Judgment.

Plaintiff Trustees hereby request oral argument on this motion for summary judgment.

Respectfully submitted,

/s/ Stephen J. Pollak
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Dated September 13, 1978

III.

4. Plaintiffs' Statement of Uncontested Material Facts

September 13, 1978

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-0650

JULIUS MULLINS, *et al.*,
Plaintiffs,
v.
KAISER STEEL CORPORATION,
Defendant.

PLAINTIFF TRUSTEES' STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Rule 1-9(h) of the Rules of this Court, plaintiffs Julius Mullins, Kenneth L. Houck, and Paul R. Dean, Trustees of the United Mine Workers of America Health and Retirement Funds (hereinafter the "Trustees"), herewith submit the following statement of material facts as to which there is no genuine issue.

1. Plaintiffs Julius Mullins, Kenneth L. Houck and Paul R. Dean are Trustees of the United Mine Workers of America Health and Retirement Funds (hereinafter referred to as the "Funds").

[Danziger Affidavit [1] ¶ 2]

2. Defendant Kaiser Steel Corporation (hereinafter "Kaiser") is a company that engages in the mining, processing and purchasing of bituminous coal.

[Complaint and Answer ¶ 9; Danziger Affidavit ¶ 8]

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[1] Reference is to the affidavit executed by Martin B. Danziger, Director of the Funds, on September 13, 1978, and filed contemporaneously herewith. The record of this case includes a second affidavit of Mr. Danziger executed June 27, 1978, and filed in connection with plaintiffs' opposition to defendant's motion to transfer the case. Wherever reference to this latter affidavit is intended, the citation will include the date of execution.

3. The International Union, United Mine Workers of America (hereinafter the "UMWA") is a labor organization which represents certain coal miners and other workers in the coal industry in collective bargaining and other labor-related activities.

[Danziger Affidavit ¶ 7]

4. The National Bituminous Coal Wage Agreement of 1974 (hereinafter the "1974 Agreement") is a collective bargaining agreement executed by the UMWA, various coal operators associations, and certain individual coal operators.

[Exhibit A to Complaint; Danziger Affidavit ¶ 4]

5. The largest association of coal operators to execute the 1974 Agreement was the Bituminous Coal Operators' Association (hereinafter "BCOA").

[Danziger Affidavit ¶ 6]

6. Kaiser was a member of BCOA and it became a party to the 1974 Agreement by virtue of its membership in BCOA.

[Danziger Affidavit of June 27, 1978 ¶ 5;
Danziger Affidavit ¶ 9]

7. The 1974 Agreement was executed on December 6, 1974, and continued in force and effect until December 6, 1977.

[Exhibit A to Complaint at 40; Danziger Affidavit ¶ 5]

8. Article XX of the 1974 Agreement provided for the establishment of four trusts, collectively referred to as the "Funds."

[Exhibit A to Complaint at 27; Danziger Affidavit ¶ 3]

9. Article XX(d) of the 1974 Agreement, which sets forth the method by which the four trusts are funded,

required employers who were signatories to that Agreement to contribute into each trust specified amounts for coal produced for use or for sale by the signatory employer. Article XX(d) also required signatory employers to contribute into each trust specified amounts for coal procured or acquired by such employer for use or for sale on which contributions to the trusts had not been made (hereinafter the "purchase-of-coal clause").

[Exhibit A to Complaint at 28]

10. Kaiser had approximately 400 UMWA employees who performed services for Kaiser during the term of the 1974 Agreement.

[Danziger Affidavit ¶ 10]

11. The Trustees provided forms (called "remittance advice forms") for use by signatory employers in reporting contributions to the Funds pursuant to the 1974 Agreement in respect to, *inter alia*, coal produced for use or sale and coal procured or acquired.

[Danziger Affidavit ¶ 11]

12. Between January 1975 and January 1978, Kaiser reported to the Funds on remittance advice forms provided by the Funds amounts of coal produced, hours worked in the production of such coal and contributions being made to the Funds relating to such production. Kaiser did not report that it had purchased, procured or acquired coal on which the contributions to the Funds called for by the 1974 Agreement had not been made in the space provided therefor on the remittance advice

forms which the Funds provided for use by signatory employers with respect to the period commencing December 6, 1974, and concluding December 6, 1977; and Kaiser did not report in the space provided on the remittance advice forms any contributions being made to the Funds with respect to any such coal purchased, procured or acquired.

[Danziger Affidavit ¶ 12]

13. During the terms of the 1974 Agreement and thereafter, Kaiser did not report to the Trustees or to the Funds in any manner that it had purchased, procured or acquired coal on which the contributions required by the 1974 Agreement had not been made and that it was not making contributions to the Funds with respect to such purchased coal.

[Danziger Affidavit ¶ 13]

14. During the term of the Agreement Kaiser purchased coal on which the contributions to the Funds required by Article XX(d) of the 1974 Agreement had not been made.

[Danziger Affidavit ¶ 14]

15. The Trustees have demanded payment from Kaiser of the contributions to the Funds called for by the purchase-of-coal clause of Article XX(d) of the 1974 Agreement on the coal purchased by Kaiser. Kaiser has not made such contributions to the Funds.

[Danziger Affidavit ¶ 15]

16. Neither Kaiser, nor any other signatory employer to the 1974 Agreement, filed an unfair labor charge with the National Labor Relations Board challenging the legality of the purchase-of-coal clause either during the term of the 1974 Agreement or thereafter.

[Danziger Affidavit ¶ 18]

17. Kaiser did not file any judicial action or intervene in any judicial action challenging the legality of the purchase-of-coal clause in the 1974 Agreement, during the term of that Agreement or thereafter, until it answered the complaint in this case.

[Danziger Affidavit ¶ 19]

18. The final paragraph of Article XX(d) provides that if during the term of the 1974 Agreement the purchase-of-coal clause is found to be unlawful, then, at the request of the union, a substitute clause would be negotiated in its place.

[Exhibit A to Complaint at 28]

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Dated: September 13, 1978

III.

5. Notice of Appeal by Defendant

March 27, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-0650

JULIUS MULLINS, *et al.*,
Plaintiffs,

v.

KAISER STEEL CORPORATION,
Defendant.

NOTICE OF APPEAL

Notice is hereby given that defendant Kaiser Steel Corporation appeals to the United States Court of Appeals for the District of Columbia Circuit from the order entered in this action on the 28th day of February, 1979, granting plaintiffs' motion for summary judgment, denying defendant's motion for summary judgment, directing sundry relief, and awarding attorneys' fees and costs.

/s/ Robert A. Hammond, III
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Dated: March 27, 1979

IV.

ORDER OF THE UNITED STATES SUPREME COURT GRANTING PETITION FOR CERTIORARI

Filed May 4, 1981

[Order of the Supreme Court filed May 4, 1981]

CERTIORARI GRANTED

• • • •

80-1345

KAISER STEEL CORP.

v.

MULLINS, JULIUS, *et al.*

The petition for writ of certiorari is granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

• • • •

V.

LETTER FROM CLERK OF THE UNITED STATES SUPREME COURT GRANTING EXTENSIONS OF TIME IN WHICH TO FILE BRIEFS

May 12, 1981

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES
Washington, D.C. 20543

May 12, 1981

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RE: *Kaiser Steel Corporation* v. *Julius Mullins, et al.*, No. 80-1345

Gentlemen:

Your joint request of May 11, 1981 has been granted.

The time for filing petitioner's brief on the merits has been extended to and including July 8, 1981.

The time for filing respondents' brief on the merits has been extended to and including August 31, 1981.

Very truly yours,

ALEXANDER L. STEVAS
Clerk

By /s/ June M. Hoffmann
(Miss) JUNE M. HOFFMANN
Assistant Clerk